

statutory and regulatory impediments to competition, but economic and operational impediments as well."¹³⁹ It belabors the obvious, however, to state that an order of magnitude difference exists between theoretically "contestable" and actually "contested" markets. While competitive potential may ultimately evolve into actual competition significant enough to discipline BOC market power, the lag in time before competition actually emerges may, and likely will, be substantial. And this lag in time will be exacerbated by BOC resistance to competitive entry and the competitive provision of local exchange and exchange access service. As succinctly put by the Commission:

We recognize that the transformation from monopoly to fully competitive markets will not take place overnight. We also realize that the steps taken thus far will not result in the immediate arrival of fully-effective competition. Accordingly, the Commission and state regulators must continue to ensure against any anticompetitive abuse of residual monopoly power, and to protect consumers from the unfettered exercise of that power.¹⁴⁰

As noted previously, monopolists do not readily relinquish market power. As the Commission has recognized, "because an incumbent LEC currently serves virtually all subscribers in its local serving area, an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market."¹⁴¹ BOCs and other incumbent LECs can erect a variety of economic and operational barriers to competitive entry into, and competitive survival in, the local market. History teaches that the BOCs will actively seek as a profit maximizing strategy

¹³⁹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 3.

¹⁴⁰ Ameritech Operating Companies: Petition for Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, 11 FCC Rcd. 14028, ¶ 130 (1996).

¹⁴¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 10.

to forestall competition by interposing these barriers. TRA submits that BOC market conduct will be adequately disciplined only when local dial tone can be obtained from other facilities-based providers with proven competitive capabilities, and that the only incentive strong enough to motivate the BOCs to permit such facilities-based competitive entry is their desire to provide "in-region," interLATA services.

TRA believes that the experience of its resale carrier members in dealing with AT&T in the long distance market is instructive here. When non-facilities based or "switchless" resale was born in the late 1980s, AT&T possessed a market share in the range of 75 percent; MCI's market share was roughly ten percent, with Sprint lagging behind at around six percent.¹⁴² During the following decade, AT&T lost more than a quarter of its market share, while MCI and Sprint increased their market shares by more than fifty percent and WorldCom seized five percent of the market.¹⁴³ During this interim period, the dealings of TRA's resale carrier members with AT&T were marred by persistent and substantial anticompetitive abuses, while MCI generally declined to provide service to resale carriers.¹⁴⁴ Only Sprint and WilTel aggressively sought the business of

¹⁴² Long Distance Market Shares (First Quarter 1997), Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Table 6 (Oct. 1997).

¹⁴³ Id.

¹⁴⁴ A survey by TRA of its resale carrier members in 1994 showed that anticompetitive abuses were limited almost exclusively to AT&T. Thus, for example, nearly 80 percent of respondents identifying AT&T as their long distance network provider reported that AT&T had used their confidential and proprietary information to solicit their customers, indicated that such abuses occurred "very frequently," "frequently" or "regularly" and were "very serious" or "serious," and confirmed that they had lost a "large number" or a "medium number" of customers as a result of such abuses. For all the rest of the long distance network providers combined, there were only two reports of "frequent" or "regular" abuse and only three reported instances of "very serious" or "serious"

resale carriers and structured their operating systems to accommodate resale. It has only been of late that AT&T has begun to view resale carriers as the large, desirable customers the FCC perceived them to be in 1991.¹⁴⁵

As the dominant player in the long distance market, AT&T had the ability and the

[footnote continued from preceding page]

abuses and "large numbers" or "medium numbers" of lost customers. With respect to service provisioning, TRA's survey revealed similar discrepancies among AT&T and the other long distance network providers. Thus, survey respondents reported that, with rare exceptions, most network providers provisioned service orders within fifteen days, with the large majority of orders being processed within ten days. In contrast, the vast majority of respondents who used AT&T reported provisioning intervals for outbound service of between sixteen days and more than one hundred and twenty days, with delays generally in the sixteen to sixty day range. With respect to "800" service, more than two thirds of the AT&T respondents reported delays of twenty-six days or more, ranging upward to one hundred and twenty days. Likewise, the survey revealed that AT&T rejected upwards to six times the number of service orders rejected by other long distance network providers. As a result, a majority of the survey respondents identifying AT&T as their network provider characterized "jamming" as a "very serious" or "serious" problem, while among respondents who identified other carriers as their network providers only a small handful so characterized "jamming." Yet another example of anticompetitive abuse relates to incomplete, inaccurate or untimely call detail reporting. Of the survey respondents identifying AT&T as their network provider, more than two thirds reported that "unbilled toll" remained a problem, while less than twenty percent of all other respondents so indicated. Not surprisingly, the vast majority of survey respondents that utilized AT&T as their network provider described their relationship with AT&T as "poor" or "fair," while the overwhelming majority of respondents who used the networks of Sprint or WilTel rated their relationships with these carriers as "good," "very good" or "excellent," with the greatest number rating their relationships "very good."

¹⁴⁵ Competition in the Interstate, Interexchange Marketplace, 6 FCC Rcd. 5880, ¶ 115 (1991) ("First Interexchange Competition Order"), 6 FCC Rcd. 7255 (1991), 6 FCC Rcd. 7569 (1991), 7 FCC Rcd. 2677 (1992), *recon.* 8 FCC Rcd. 2659 (1993), 8 FCC Rcd. 3668 (1993), 8 FCC Rcd. 5046 (1993), *recon.* 10 FCC Rcd 4562 (1995) ("[R]esellers, like other users, are valued customers -- in fact, they are large customers. It is not reasonable to assume that AT&T will refuse to present them with viable service options at reasonable rates."). The Commission was correct in one respect, resale carriers are among the largest purchasers of interexchange services in the Nation. For example, the resale carriers listed in the FCC's report of long distance market share provide billions of dollars in revenues annually to long distance network service providers. Long Distance Market Shares (First Quarter 1997) at Table 6.

incentive to act in an anticompetitive manner toward resale carriers. After all, seven out of every ten customers acquired by resale carriers were previously AT&T customers. In sharp contrast, Sprint and WilTel had a strong economic incentive to deal with resale carriers. More than nine out of every ten customers resale carriers placed on the Sprint network had been customers of Sprint's long distance competitors and WilTel had positioned itself in the market as a wholesale provider. As a result, Sprint and WilTel welcomed resale carriers and actively worked to enhance service provisioning, billing and security to benefit resale carriers, while AT&T abused its forced relationship with resale carriers, acting to affirmatively undermine their competitive viability. Only when AT&T's market share approached 50 percent and the other facilities-based providers had achieved a strong market position did AT&T begin to reform its conduct with respect to resale carriers. Other earlier offered incentives, such as price cap regulation or reclassification as a nondominant carrier, had proven to be insufficient to incite such reformation.

History will soon repeat itself in the local market. Like AT&T, the BOCs will seek to thwart competition by anticompetitive abuse of market power; their ability and incentives to do so, however, will be greater than AT&T's both because their market share is substantially larger and their control of essential facilities is far more pervasive. While the Commission has recognized that the "transition from monopoly to competition" will not be an easy one and has promised "swift, sure and effective" enforcement of the rules adopted to open local markets to competition, it has nonetheless acknowledged that in the event that it fails in its enforcement responsibilities, "the

actions [taken] . . . to accomplish the 1996 Act's pro-competitive, deregulatory objectives may prove to be ineffective."¹⁴⁶

TRA submits that only an entity which has operated within a legally protected monopoly environment, confronting competition only at the fringes of its market, would claim with a straight face that the public interest would be well served by sanctioning its entry into a competitive market in which it could use its market power in its monopoly stronghold to disadvantage competitors without first ensuring that that monopoly bastion had been, or at least could be, breached by competitive providers. The market BellSouth seeks to enter is now served by a half dozen national networks supplemented by dozens of regional networks, and populated by hundreds of providers.¹⁴⁷ More than five years ago, the Commission found this market to be "substantially competitive."¹⁴⁸ And since that time, the market share of AT&T has fallen another ten percentage points and the market share of carriers beyond the "big three" has nearly doubled.¹⁴⁹

Standing in stark contrast is the local exchange/exchange access market. The BOCs still account for "approximately 99.1 percent of the local service revenues in the markets they

¹⁴⁶ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 20.

¹⁴⁷ Motion of AT&T to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd. 3271, ¶¶ 57 - 62 (1995); Fiber Deployment Update: End of Year 1996, Kraushaar, J. M., Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, 6 - 14 (July 1997).

¹⁴⁸ Competition in the Interstate, Interexchange Marketplace, 6 FCC Rcd. 5880 at ¶ 36.

¹⁴⁹ Long Distance Market Shares (First Quarter 1997), Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Table 5 (Jan. 15, 1997).

serve."¹⁵⁰ Two years ago, the Commission reported that "development of competition in local services is roughly a dozen years behind the development of competition in long distance."¹⁵¹ Over the past decade, competitive access providers have only "selectively impact[ed] the growth of demand of the local exchange carriers."¹⁵² In short, the local exchange remains "one of the last monopoly bottleneck strongholds in telecommunications."¹⁵³

As the Commission has recognized, introducing competition into the local exchange/exchange access market is key to realization of the Congressional goal of "opening all telecommunications markets to competition."¹⁵⁴ Infusion of competition into this "monopoly bottleneck stronghold" was intended by Congress "to pave the way for enhanced competition in *all* telecommunications markets."¹⁵⁵ As the Commission explained, "[c]ompetition in local exchange and exchange access markets is desirable, not only because of the social and economic benefits competition will bring to consumers of *local* services, but also because competition eventually will

¹⁵⁰ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd. 21905 at ¶ 10.

¹⁵¹ Common Carrier Bureau, Federal Communications Commission, Common Carrier Competition, (Spring, 1995).

¹⁵² Fiber Deployment Update: End of Year 1996 at 34.

¹⁵³ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 4.

¹⁵⁴ Joint Explanatory Statement at 113.

¹⁵⁵ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 4 (emphasis in original).

eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck local facilities to impede free market competition."¹⁵⁶

The sequence, hence, is critical to furtherance of the public interest. First, given that "incumbent LECs have no economic incentive, *independent of the incentives set forth in sections 271 and 274 of the 1996 Act*, to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services,"¹⁵⁷ local exchange/exchange access competition will not emerge, or will not emerge as quickly, if BOC entry into the "in-region," interLATA market is authorized prematurely. Thus, in order to secure for the public the benefits of local competition, grant of "in-region," interLATA authority must follow competitive entry into the local exchange/exchange access market. Only after the benefits to be derived from such competitive entry have been secured should the focus shift to "promoting greater competition in the long distance market."¹⁵⁸ As the Commission has explained, local exchange/exchange access competition will "pave the way for enhanced competition in all telecommunications markets."¹⁵⁹ As set forth by the Commission, the proper sequence is:

Under section 251, incumbent local exchange carriers . . . , including the Bell Operating Companies . . . , are mandated to take several steps to open their networks to competition . . . Under Section 271, *once*

¹⁵⁶ Id. (emphasis in original).

¹⁵⁷ Id. at ¶ 55 (emphasis added).

¹⁵⁸ Id. (emphasis in original).

¹⁵⁹ Id. (emphasis in original).

*the BOCs have taken the necessary steps, they are allowed to offer long distance service in areas where they provide local telephone service.*¹⁶⁰

Moreover, just as the Commission has recognized that the public will benefit from local exchange/exchange access competition, so too has it acknowledged that the BOCs retain the incentive and the ability to utilize their "bottlenecks" control of essential facilities to disadvantage IXC rivals.¹⁶¹ While the Congress and the Commission have endeavored to establish various structural and accounting safeguards to curb BOC abuse of market power, only the market forces unleashed by competitive entry into the local exchange/exchange access market will adequately discipline BOC market behavior.¹⁶² Thus, the secondary goal of "promoting greater competition in the long distance market" will only be achieved if the proper sequence is followed.

The existence of widespread local exchange/exchange access competition addresses several concerns critical to a public interest analysis. First, it provides demonstrable evidence that local markets have indeed been opened to competitive entry. Given the number and diversity of the economic and operational barriers to entry that the Commission has acknowledged exist,¹⁶³ the only viable way to confirm that local markets have actually been opened is to ascertain that new market

¹⁶⁰ Id. (emphasis in original).

¹⁶¹ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd. 21905 at ¶¶ 10 - 13.

¹⁶² Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd. 21905 at ¶¶ 1 *et. seq.*; Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996 (Report and Order) 11 FCC Rcd. 17539 (1996); 47 U.S.C. § 272.

¹⁶³ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶¶ 10 - 20.

entrants have established competitive footholds. As the Commission has recognized, such difficulty to detect stratagems as BOC failure to provide such basic functions as ordering, provisioning, maintenance and repair on a nondiscriminatory basis can severely disadvantage competitors.¹⁶⁴

Second, widespread local exchange/exchange access competition confirms that the fourteen items on the "competitive checklist" have truly been "fully implemented." Full implementation requires actual operational viability, not mere paper promises, and operational viability generally can only be determined in a commercial setting. Competitors will readily identify flaws that might otherwise go unnoticed.

Third, widespread local exchange/exchange access competition ensures that the public will in fact derive the benefits competitive local service offerings should afford. Fourth, such competition will enhance the likelihood that long distance competition will not be adversely impacted by BOC entry into the "in-region," interLATA market. Consumers benefit from actual, not theoretical, competition. Market behavior is constrained by actual, not theoretical, market forces.

Simply put, the proof of the pudding is in the eating. If there is little or no local exchange/exchange access competition, the odds are that the petitioning BOC has not completely opened its markets and fully implemented all items on the "competitive checklist." As noted above, history teaches that monopolists do not readily relinquish market control. Economics teaches that corporations will generally pursue profit-maximizing strategies. Logic, therefore, dictates that the Commission should proceed with caution in doling out the sole incentive BOCs have to take actions that would otherwise be directly contrary to their interests.

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to deny the Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. under Section 271(d) of the Communications Act, as amended by Section 151 of the Telecommunications Act to provide interLATA service within the "in-region State" of Louisiana. As demonstrated by TRA above, BellSouth has failed to satisfy the requirements for providing "in-region," interLATA service set forth in Section 271(c), and to establish that the authorization it requests is consistent with the public interest, convenience and necessity, as required by Section 271(d)(3).

Respectfully submitted,

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EXHIBIT I

"Your Telecommunications Resale Advantage"



➤ **Resale Product Offerings**



**Virtually All Retail
Telecommunications Services**

- **Residence Services**
- **Small Business Services**
- **Large Business Services**
- **Government Services**

Your Interconnection Advantage

“Your Telecommunications Resale Advantage”



➤ **Resale Product Offerings**

Non-Telecommunications Services

- Voice Messaging Services
- Inside Wire Services

Resale without Discount



Your Interconnection Advantage

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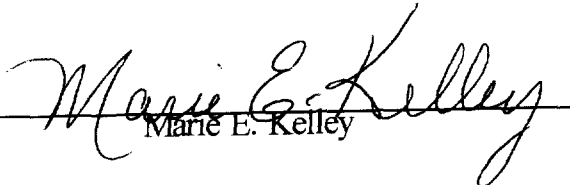
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